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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/615,317

07/08/2003

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EXAMINER

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ART UNIT

PAPER NUMBER

2884

MAIL DATE

DELIVERY MODE

01/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOSEPH S. STAM, KEITH H. BERENDS,  
GREGORY S. BUSH, JEREMY B. BANKS,  
and ERIC J. WALSTRA

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Appeal 2008-2860  
Application 10/615,317  
Technology Center 2800

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Decided: January 27, 2009

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Before BRADLEY R. GARRIS, MICHAEL P. COLAIANNI, and  
JEFFREY B. ROBERTSON, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 26, 27, 32-38, and 41-46. We have jurisdiction under 35 U.S.C. § 6.

We REVERSE.

*Statement of the Case*

Appellants claim a vehicular vision system comprising an image sensor and a light source configured to operate in synchronous relationship with acquisition of images from said image sensor, the vision system being capable of distinguishing vehicular light source from non-vehicular light sources.

A copy of representative independent claim 26, taken from the Claims Appendix of the Appeal Brief, is set forth below:

26. A vehicular vision system, comprising:

an image sensor and a light source, said light source is configured to emit light rays in the non-visible spectrum to illuminate objects within a scene external to a controlled vehicle beyond an exterior surface of a windshield, wherein said light source is configured to operate in synchronous relationship with acquisition of images from said image sensor, the vision system being capable of distinguishing vehicular light source from non-vehicular light sources.

The Examiner rejects all claims under the second paragraph of 35 U.S.C. § 112 for failing to particularly point out and distinctly claim the subject matter which Appellants regard as their invention.

The Examiner determines that the independent claim limitation “the vision system capable of distinguishing vehicular light source from non-vehicular light sources” renders the appealed claims indefinite because “it is unclear what, if any, structure is suggested or implied by the recited capability” (Ans. 3).

The Examiner also rejects claims 26, 27, 33, 35-38, 41, and 44-46 under 35 U.S.C. § 102(e) as being anticipated by Holz (U.S. Patent 6,552,342).

In support of this rejection, the Examiner finds that, “[a]s best understood *Holz* discloses that the system is capable of distinguishing vehicular from non-vehicular light sources (i.e. the system checks whether data in the video image is glare from an oncoming laser headlight -- col. 4, lines 26-28; and col. 2, lines 50-54)” (Ans. 4). As alternative support for the § 102 rejection, the Examiner “has interpreted the limitation at issue (i.e. the recited capability) [of distinguishing vehicular light source from non-vehicular light sources] as not requiring any new limitations that would distinguish the recited [sic] claim [26] from the cited prior art” (Ans. 11).

Finally, the Examiner rejects claims 32, 34, 42, and 43 under 35 U.S.C. § 103(a) as being unpatentable under *Holz*.

This rejection is based on the Examiner’s conclusion that it would have been obvious for an artisan to provide *Holz* with the features recited in these rejected dependent claims (Ans. 5-6).

#### The § 112, Second Paragraph, Rejection

##### *Issue*

Have Appellants shown error in the Examiner’s determination that the independent claim 26 limitation “the vision system being capable of distinguishing vehicular light source from non-vehicular light sources” renders the appealed claims indefinite?

##### *Findings of Fact*

The subject Specification describes the claim 26 image sensor and light source in paragraphs [0033] through [0036] and [0048]. The Specification describes the claim 26 requirement that the light source be configured to operate in synchronous relationship with acquisition of images

from the image sensor in paragraph [0051]. Finally, the claim 26 requirement that the vision system be capable of distinguishing vehicular light source from non-vehicular light sources is described in Specification paragraph [0055]. More specifically, in this later regard, paragraph [0055] discloses that Appellants' vision system is capable of distinguishing vehicular light source from non-vehicular light sources "such as sign reflections" (l. 8 of para. [0055]).

### *Principles of Law*

The test for definiteness under the second paragraph of 35 U.S.C. § 112 is whether those skilled in the art would understand what is claimed when the claim is read in light of the specification. *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986). *See also Ex parte Miyazaki*, Appeal 2007-3300 (BPAI Nov. 19, 2008).

### *Analysis*

Appellants argue that those skilled in the art would understand the claim 26 capability limitation when the claim is read in light of the Specification paragraphs referenced above (App. Br. 9). In particular, Appellants argue that artisans would understand that claim 26 requires the vision system to be capable of distinguishing vehicular light source from non-vehicular light sources such as sign reflections (Reply Br. 2-3). This last mentioned capability is disclosed in Specification paragraph [0055] as achievable by measuring the light source brightness (l. 6-9 of para. [0055]).

The Examiner acknowledges the paragraph [0055] disclosure but states that "the paragraph provides no indication of how to measure the light sources brightness, nor how one might distinguish a vehicular and a non-vehicular light source from among two equally bright light sources" (Ans.

8). However, these statements have no apparent relationship to the issue of indefiniteness. Instead, the Examiner's statements appear to express unsupported doubt that Appellants' disclosure would enable one skilled in this art to make and use a vision system which is capable of distinguishing vehicular light source from non-vehicular light sources in accordance with claim 26. Because Appellants' claims have not been rejected for lack of enablement, we will not consider such an issue in our disposition of this Appeal.

#### *Conclusions of Law*

Appellants have established that the Examiner erred in determining that the claim 26 limitation "the vision system being capable of distinguishing vehicular light source from non-vehicular light sources" renders the appealed claims indefinite.

Therefore, we cannot sustain the Examiner's § 112, second paragraph, rejection of claims 26, 27, 32-38, and 41-46.

#### *The Prior Art Rejections*

##### *Issue*

Have Appellants shown error in the Examiner's finding that Holz satisfies the claim 26 requirement "the vision system being capable of distinguishing vehicular light source from non-vehicular light sources"?

##### *Findings of Fact*

The Examiner finds that Holz discloses a system which "checks whether data in the video image is glare from an oncoming laser headlight-- col. 4, lines 26-28; and col. 2, lines 50-54)" (Ans. 4).

As phrased in the Holz patent, “the task of the present invention [is] to make available a system for improvement of visibility in vehicles, which suppresses the emitted light from oncoming vehicles with permanent open-diaphragm laser headlights without losses” (col. 2, l. 50-54).

At lines 26-28 of column 4, Holz discloses that “a checking of whether a glare from a laser headlight is present occurs in that the data of the video images itself is evaluated by a[n] evaluation device”.

#### *Principles of Law*

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

#### *Analysis*

Appellants correctly argue that “Holz et al. has absolutely no teaching, suggestion or motivation for distinguishing vehicular light sources from non-vehicular light sources. To the contrary, the Holz et al. disclosure is exclusively focused on distinguishing one vehicular light source from another vehicular light source” (App. Br. 13; *see also* Reply Br. 3-4).

The Examiner finds that “Holz discloses that the system is capable of distinguishing vehicular from non-vehicular light sources” (Ans. 4). As support for this finding, the Examiner refers to the above quoted disclosures in columns 2 and 4 of Holz (*id.*). This finding lacks perceptible merit. The afore-quoted teachings of Holz contain no express disclosure at all that patentee’s system is capable of distinguishing vehicular from non-vehicular light sources. Moreover, the Examiner has not even asserted, much less established by presentation of facts and/or technical reasoning, that Holz

inherently discloses a system which necessarily possesses the capability in question.

As an apparently alternative position, the Examiner “has interpreted the limitation at issue (i.e. the recited capability) as not requiring any new limitations that would distinguish the recited [sic] claim [26] from the cited prior art” (Ans. 11). This interpretation is plainly incorrect to the extent it ignores the claim 26 recitation “the vision system being capable of distinguishing vehicular light source from non-vehicular light sources”. Claim 26 unquestionably requires a vision system which possesses the recited capability, and an interpretation which ignores this capability requirement is unquestionably erroneous. In expressing this interpretation, the Examiner may be attempting to state that any vision system which possesses an image sensor and a light source as required by claim 26, such as Holz’s vision system, would inherently possess the capability under review. Again, however, the Examiner has not established, or even explicitly asserted, that Holz’s system inherently possesses this capability.

#### *Conclusions of Law*

Appellants have shown that the Examiner erred in finding that the vision system of Holz satisfies the claim 26 requirement “the vision system being capable of distinguishing vehicular light source from non-vehicular light sources”.

As a consequence, we cannot sustain the Examiner’s § 102 rejection of claims 26, 27, 33, 35-38, 41, and 44-46 as being anticipated by Holz. Further, because this deficiency of Holz is not remedied by the Examiner’s obviousness position, we also cannot sustain the § 103 rejection of claims 32, 34, 42, and 43 as being unpatentable under Holz.



Appeal 2008-2860  
Application 10/615,317

Summary

We have not sustained any of the rejections advanced by the Examiner in this Appeal.

*Order*

The decision of the Examiner is reversed.

REVERSED

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